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9 Attorneys for Plaintiff
10 Coastal Cocktails, Inc.

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 COASTAL COCKTAILS, INC. d/b/a
15 MODERN GOURMET FOODS, a
California corporation,

16 Plaintiff,

17 v.

18 MONACO EXCHANGE INC. d/b/a Best
19 Jewelry, a Florida Corporation, and DOES 1-
10

20 Defendant.

21 **Case No.**

22 **COMPLAINT FOR:**

23 **TRADEMARK INFRINGEMENT [15
U.S.C. § 1114];**

24 **TRADEMARK INFRINGEMENT [15
U.S.C. § 1125(a)];**

25 **STATE UNFAIR COMPETITION [CAL.
BUS. & PROF. CODE § 17200];**

26 **COMMON LAW UNFAIR
COMPETITION; AND**

27 **CONVERSION.**

28 **DEMAND FOR TRIAL BY JURY**

1 Plaintiff Coastal Cocktails, Inc., d/b/a Modern Gourmet Foods (“Coastal” or
2 “Plaintiff”), by its undersigned attorneys, Duane Morris LLP, for its Complaint against
3 Defendant Monaco Exchange Inc. d/b/a Best Jewelry (“Defendant”), hereby alleges as
4 follows:

5 **NATURE OF THE ACTION**

6 1. This action seeks damages and injunctive relief for Defendant’s
7 infringement of Plaintiff’s distinct THOUGHTFULLY and SMOKEHOUSE BY
8 THOUGHTFULLY trademarks and unfair competition under Federal and California
9 law, and related common law claims.

10 2. Since at least as early as 2016 and 2022 respectively, Plaintiff has used
11 the THOUGHTFULLY and SMOKEHOUSE BY THOUGHTFULLY trademarks as
12 a brand identifier for its high quality food gift products and spice mixes.

13 3. On information and belief, Defendant began selling illegally-obtained
14 products bearing Plaintiff’s THOUGHTFULLY and SMOKEHOUSE BY
15 THOUGHTFULLY trademarks online in or around September 2023.

16 4. After repeated correspondence informing Defendant of Plaintiff’s rights
17 in the THOUGHTFULLY and SMOKEHOUSE BY THOUGHTFULLY trademarks
18 and Defendant’s unauthorized sale of Plaintiff’s SMOKEHOUSE BY
19 THOUGHTFULLY spice mixes, Defendant continued to offer and sell the illegally-
20 obtained spice mixes online.

21 5. Defendant’s unauthorized use of Plaintiff’s THOUGHTFULLY and
22 SMOKEHOUSE BY THOUGHTFULLY trademarks and unauthorized sale of
23 Plaintiff’s products has or will likely cause confusion as to the association,
24 sponsorship, and/or approval of Defendant by Plaintiff, constituting trademark
25 infringement in violation of the Lanham Act and California statutory and common
26 law. Furthermore, based on information and belief, Defendant knew or should have

1 known that the SMOKEHOUSE BY THOUGHTFULLY spice mixes it is selling are
2 stolen goods.

3 **THE PARTIES**

4 6. Plaintiff Coastal Cocktails, Inc. d/b/a Modern Gourmet Foods is a
5 California corporation with its principal place of business at 1920 E Deere Avenue,
6 Santa Ana, CA 92705.

7 7. Upon information and belief, Defendant Monaco Exchange Inc. d/b/a
8 Best Jewelry is a Florida corporation with its principal place of business at 17890 NW
9 29th CT Miami Gardens, Florida 33056.

10 8. Defendants Does 1-10 are sued here under fictitious names because their
11 true names and capacities are unknown to Plaintiff at this time. Upon information and
12 belief, the Does are or have been affiliated with Defendant in connection with the
13 matters alleged in this Complaint, acting in concert and active participation with
14 Defendant in committing the wrongful acts alleged herein.

15 **JURISDICTION AND VENUE**

16 9. This Court has subject matter jurisdiction over this controversy under the
17 Lanham Act, 15 U.S.C. §§ 1051 *et seq.* This Court further has jurisdiction over all
18 of the claims asserted in this matter pursuant to 28 U.S.C. §1332, as there is
19 complete diversity of citizenship of the parties and the amount in question exceeds
20 \$75,000.00.

21 10. This Court has supplemental jurisdiction over Plaintiff's state law claims
22 under 28 U.S.C. § 1337 because these claims are so related to the federal claims
23 within the Court's original jurisdiction that they form part of the same case or
24 controversy under Article III of the United States Constitution.

25 11. This Court has personal jurisdiction over Defendant because Defendant
26 transacts extensive business in the State of California, including selling the accused
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1 products to consumers in California and this district through third-party seller
2 Amazon.

3 12. Venue is proper in the Central District of California pursuant to 28
4 U.S.C. § 1331, because Defendant is subject to personal jurisdiction in this district
5 due to its voluntary transacting business herein, including offering and selling
6 products in and to this district, and because a substantial portion of the events at
7 issue have arisen and will arise in this judicial district.

FACTUAL BACKGROUND

A. Plaintiff and Plaintiff's Trademarks

10 13. For over 25 years, Plaintiff has been a global leader in premium gourmet
11 foods and food gifts. Plaintiff has used the THOUGHTFULLY trademark since at
12 least as early as 2016 to market its products. On or about May of 2022, Plaintiff
13 started offering its spice mixes under the **SMOKEHOUSE BY THOUGHTFULLY**
14 trademark, as shown below.



14. Plaintiff sells its spice mixes online throughout the United States,
15 including through online retailers such as Walmart and Macy's. One of Plaintiff's
16 primary sales channels is through its storefront on Amazon.com. Plaintiff sells its
17 products direct to consumers.
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15. Plaintiff is the owner of the entire right, title, and interest in and to
 2 United States applications for its **THOUGHTFULLY** and **SMOKEHOUSE BY**
 3 **THOUGHTFULLY** trademarks, including those shown below:

Trademark	Reg. No./ App No.	Filing Date	Registration/ NOA Date	Goods
THOUGHTFULLY	5251901	Feb. 11, 2016	Jul. 25, 2017	I.C. 30: Gift sets comprising food and beverage components in the nature of barbecue sauces
THOUGHTFULLY	97/975,319	October 12, 2021	November 21, 2023	I.C. 30: barbecue rubs; spice mixtures; spices
SMOKEHOUSE BY THOUGHTFULLY	97/071,221	October 12, 2021	Sept. 5, 2023	I.C. 30: barbecue rubs; spice mixtures; spices

16. Each of the above applications have been issued a Notice of Allowance. Attached as
 17 **Exhibit A** hereto and incorporated herein by reference are copies of the Registration
 18 Certificates and Notices of Allowance for the foregoing trademarks.

19. Plaintiff's registration listed in Paragraph 15 is valid and subsisting, in
 20 full force and effect, and constitutes *prima facie* evidence of the validity of the
 21 registered trademark and Plaintiff's exclusive right to use the trademark in commerce
 22 in connection with the goods specified in the registration. Notably, U.S. Registration
 23 No. 5,251,901 is also incontestable pursuant to 15 U.S.C. § 1065, and accordingly
 24 constitutes conclusive evidence of the validity of the registered trademark and the
 25 registration therefor, of Plaintiff's ownership of the registered trademark, and of
 26 Plaintiff's exclusive right to use the trademark in connection with the goods covered
 27 by the registration.

1 17. Plaintiff extensively markets its SMOKEHOUSE BY THOUGHTFULLY
2 brand online through social media channels including Facebook, Instagram, and
3 TikTok.

4 **B. Defendant's Online Sales**

5 18. Based on information and belief, Defendant has offered for sale a variety
6 of discounted products, via Amazon.com, including spice mixes bearing the
7 SMOKEHOUSE BY THOUGHTFULLY trademark.

8 19. In September of 2023, Plaintiff became aware that Defendant was selling
9 these SMOKEHOUSE BY THOUGHTFULLY spice mixes under the Amazon.com
10 seller name "Best Jewelry."

11 20. As shown below, Defendant's listing on Amazon.com is identical to
12 Plaintiff's, including use of the same images, listing title, and product description.
13 The only indication that this is not Plaintiff's authorized listing is the small "sold by"
14 information on the right side, as highlighted.

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Plaintiff's Listing (Located at <https://www.amazon.com/Thoughtfully-Smokehouse-Ultimate-Grilling-Seasoning/dp/B083C4TBT5>)

Customers who viewed this item also viewed

Smokehouse by Thoughtfully, Gourmet Grilling Spice Set in Mini Glass Bottles, Vegan and Vegetarian, Grill Seasoning Flavors Include Caribbean, Jamaican Jerk, Jalapeno, Montreal an...



★★★★★ 175
\$24.99 (\$2.50/Ounce)

Smokehouse by Thoughtfully, Gourmet Hot Sauce Gift Set, Flavors Include Mango Habanero, Buffalo, Bacon Cayenne, Smoky Bourbon, Fire Jalapeno and More, Variety Pack, Set of 10



★★★★★ 603
\$29.99 (\$3.00/Count)

BBQ Rub Gift Set - Spice Gift Set in Premium Wooden Box - Great Grilling Gift for Christmas, Birthday, Father's Day for Him, Dad, Men, or Her - Unique Barbecue Seasonings (Set of 9)



★★★★★ 198
\$44.99

Grocery & Gourmet Food › Pantry Staples › Herbs, Spices & Seasonings › Mixed Spices & Seasonings › Barbecue Seasoning

Smokehouse by Thoughtfully Ultimate Grilling Spice Set, Grill Seasoning Gift Set Flavors Include Chili Garlic, Rosemary and Herb, Lime Chipotle, Cajun Seasoning and More, Pack of 20

Visit the Thoughtfully Store
4.6 ★★★★★ 6,686 ratings | 22 answered questions
#1 Best Seller in Barbecue Seasonings

10K+ bought in past month

\$35.01 (\$35.01 / Count)

Get a \$60 Gift Card: Pay \$0.00 \$35.01 upon approval for Amazon Visa. No annual fee.

Diet type
✓ Vegetarian

Ingredients

About this item
[Report incorrect product information.](#)

Consider a similar item

McCormick Grill Mates Seasonings Grillings - 4 CT
4 Piece Assortment
★★★★★ (76)
\$22.95 (\$1.64/Ounce)

Add your free 30-day trial of Prime and get fast, free delivery

Delivery **Pickup**

\$35.01 (\$35.01 / Count)

FREE delivery **Monday, December 11**

Or fastest delivery **Tuesday, December 7**. Order within 4 hrs: 11 mins

Delivering to Philadelphia 19107
[Update location](#)

In Stock

Qty: 1

Ships from Amazon
Sold by Thoughtfully Gifts
Returns Non-returnable due to food safety reasons
Payment Secure transaction
[See more](#)

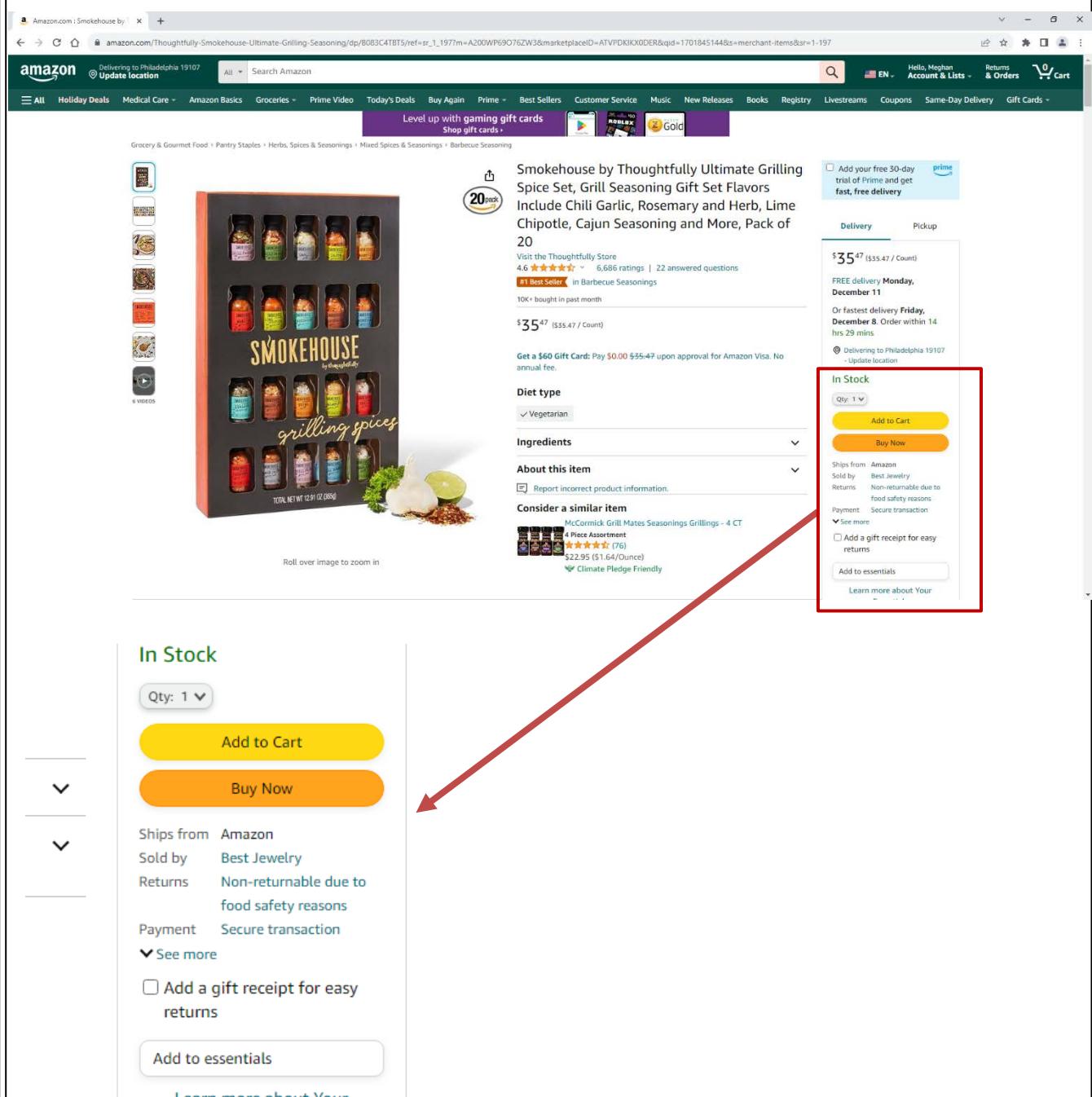
Add a gift receipt for easy returns

1 **Defendant's Listing (Located at https://www.amazon.com/Thoughtfully-Smokehouse-Ultimate-Grilling-Seasoning/dp/B083C4TBT5/ref=sr_1_197?m=A200WP69O76ZW3&marketplaceID=ATVPDKIKX0DER&qid=1701845144&s=merchant-items&sr=1-197)**

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1 21. The SMOKEHOUSE BY THOUGHTFULLY spice mixes sold by “Best
2 Jewelry” are discounted substantially from the market price for these products.

3 22. On September 16, 2023, Plaintiff arranged for purchase of nine samples
4 of the SMOKEHOUSE BY THOUGHTFULLY spice mixes sold by “Best Jewelry”
5 on Amazon.com.

6 23. On October 9, 2023, Plaintiff arranged for purchase of forty samples of
7 the SMOKEHOUSE BY THOUGHTFULLY spice mixes sold by “Best Jewelry” on
8 Amazon.com.

9 24. Plaintiff analyzed the SMOKEHOUSE BY THOUGHTFULLY spice
10 mixes from “Best Jewelry” and confirmed that the product was, in fact, their product,
11 but identified that the expiration date on the purchased product indicated that this was
12 product produced for sale in 2022. Plaintiff also confirmed that the Lot Code for the
13 units purchased corresponds to product produced on June 21, 2022.

14 25. Based on information and belief, Defendant has a substantial amount of
15 inventory of the infringing product in its possession. However, Plaintiff only sells its
16 product direct to consumers in amounts suitable for individual consumption or gift
17 giving. Based on the amount of inventory Defendant possesses, the expiration dates,
18 and the low price-point, Plaintiff determined that Defendant’s inventory has never
19 been legitimately sold or distributed and that the products sold by “Best Jewelry” are
20 stolen goods.

21 26. On October 10, 2023, Willem Driessen, Chief Marketing Officer and
22 General Manager Direct to Consumer, had a telephone conversation with Israel
23 Aminov of Defendant to discuss the unauthorized sale of the SMOKEHOUSE BY
24 THOUGHTFULLY spice mixes.

25 27. That same day, Mr. Driessen sent an email to Mr. Aminov offering to
26 purchase Defendant’s inventory of the unauthorized SMOKEHOUSE BY

1 THOUGHTFULLY spice mixes and requesting information about the source of
2 Defendant's inventory. A copy of the letter is attached hereto as **Exhibit B**.

3 28. During the conversation with Mr. Driessen, Mr. Aminov refused to
4 identify the source of the goods being sold by Defendants.

5 29. On November 27, 2023, Plaintiff, through counsel, sent a letter via
6 Certified Mail to Mr. Israel Aminov and Mr. Yoram J. Teshuba of Monaco Exchange
7 Inc. at the 17890 NW 29th CT, Miami Gardens, Florida address, notifying them that
8 the SMOKEHOUSE BY THOUGHTFULLY spice mixes it was advertising and
9 distributing through Amazon.com were unauthorized, and demanding that they
10 remove the products from Amazon.com. A copy of the letter is attached hereto as
11 **Exhibit C**.

12 30. To date, Defendant has failed to respond to Plaintiff's correspondence,
13 and has thus far refused to cooperate with Plaintiff's requests for action and
14 information.

15 31. Upon information and belief, Defendant obtained these stolen goods
16 through one or more presently unknown third parties with an intent to resell such
17 products without the consent of, and without paying value to, Plaintiff.

18 32. Upon information and belief, Defendant knew, or should have known
19 that the SMOKEHOUSE BY THOUGHTFULLY spice mixes it was selling were
20 stolen goods.

21 33. Upon information and belief, Defendant's improper acquisition of stolen
22 SMOKEHOUSE BY THOUGHTFULLY spice mixes enables Defendant to sell the
23 product for less money than Plaintiff, providing an unfair competitive advantage to
24 Defendant, and diverting sales from Plaintiff.

25 34. Plaintiff is unable to certify the quality of the products being sold by
26 Defendant, as Plaintiff does not know the conditions under which the products have
27 been stored.

35. Because Defendant's Amazon.com listing looks identical to Plaintiff's listing, it appears to consumers that the stolen products are sold by Plaintiff or with Plaintiff's authorization.

36. Due to the low customer ratings that Best Jewelry has on Amazon.com, it is likely that customers purchasing the stolen product will receive poor service, and will attribute the poor service quality to Plaintiff, damaging Plaintiff's reputation.

37. Plaintiff has been forced to lower the prices of its products on its Amazon.com listing in order to compete with Defendant's drastically discounted prices, to Plaintiff's detriment. Defendant is currently listing the unauthorized SMOKEHOUSE BY THOUGHTFULLY spice mixes on Amazon.com for \$35.47 per unit. Plaintiff's market price for the SMOKEHOUSE BY THOUGHTFULLY spice mixes is normally \$49.99 per unit. As a result, Plaintiff is losing appreciable income due to the unauthorized listing and sales.

FIRST CAUSE OF ACTION

(Federal Trademark Infringement, 15 U.S.C. § 1114)

38. Plaintiff repeats and realleges the allegations set forth in the paragraphs above as if fully set forth herein.

39. Plaintiff owns a valid and protectable federal trademark registration for the THOUGHTFULLY trademark, as shown at Exhibit A hereto. The THOUGHTFULLY trademark is used in commerce, have been used continuously in commerce for over seven (7) years, and is distinctive by virtue of its inherent and acquired distinctiveness, extensive use, and publicity throughout the United States.

40. As described in detail in the paragraphs set forth above, Defendant is advertising, promoting, and selling unauthorized SMOKEHOUSE BY THOUGHTFULLY spice mixes.

41. Defendant's use of the SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks under and/or in connection with the unauthorized

1 goods, is likely to cause confusion, mistake, or deception as to the affiliation,
2 connection, or association of Defendant with Plaintiff, or as to the origin, sponsorship,
3 or approval of Defendant's products. Such use constitutes trademark infringement in
4 violation of 15 U.S.C. § 1114(1)(a).

5 42. Defendant's actions are without the authorization or permission of
6 Plaintiff. Upon information and belief, Defendant chose to provide, sell, advertise, and
7 promote the spice mixes in connection with the SMOKEHOUSE BY
8 THOUGHTFULLY and THOUGHTFULLY trademarks with actual knowledge of
9 Plaintiff's prior use of and rights in the trademarks. Upon information and belief,
10 Defendant chose to provide, sell, advertise, and promote the spice mixes under and/or
11 in connection with the SMOKEHOUSE BY THOUGHTFULLY and
12 THOUGHTFULLY trademarks in commerce with the intent to cause confusion, to
13 cause mistake, or to deceive.

14 43. Upon information and belief, Defendant has profited from this
15 infringement.

16 44. This is an exceptional case under 15 U.S.C. § 1117(a).

17 45. Defendant's willful conduct has caused damage to Plaintiff in an amount
18 to be determined at trial, and unless restrained, will continue to cause serious and
19 irreparable injury for which there is no adequate remedy at law.

20 46. In light of the foregoing, Plaintiff is entitled to injunctive relief, and to
21 recover from Defendant all damages, including lost profits and attorneys' fees, that
22 Plaintiff has sustained and will sustain as a result thereof, in an amount not yet known,
23 but which circumstances warrant enhancement pursuant to 15 U.S.C. § 1117(a), as
24 well as the costs of this action. Plaintiff is also entitled to an accounting of Defendant's
25 profits resulting from its Lanham Act violations.

SECOND CAUSE OF ACTION

(Federal Trademark Infringement, 15 U.S.C. § 1125(a))

47. Plaintiff repeats and re-alleges the allegations set forth in the paragraphs above as if fully set forth herein.

48. Plaintiff is the owner of the valid SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks, which are entitled to full recognition and protection under federal trademark law.

49. The SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks are used in commerce, have been used continuously in commerce since at least as early as May of 2022 and 2016 respectively, and are distinctive by virtue of their inherent and acquired distinctiveness and extensive use throughout the United States.

50. As described in detail in the paragraphs set forth above, Defendant is advertising, promoting, and selling unauthorized spice mixes under and/or in connection with the SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks in the United States through its Amazon.com listing.

51. Defendant's use of the SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks under and/or in connection with the unauthorized goods, is likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of Defendant with Plaintiff, or as to the origin, sponsorship, or approval of Defendant's products. Such use constitutes trademark infringement in violation of 15 U.S.C. § 1125(a).

52. Defendant's actions are without the authorization or permission of Plaintiff. Upon information and belief, Defendant chose to provide, sell, advertise, and promote the spice mixes in connection with the SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks with actual knowledge of Plaintiff's prior use of and rights in the trademarks. Upon information and belief,

1 Defendant chose to provide, sell, advertise, and promote the spice mixes under and/or
2 in connection with the SMOKEHOUSE BY THOUGHTFULLY and
3 THOUGHTFULLY trademarks in commerce with the intent to cause confusion, to
4 cause mistake, or to deceive.

5 53. Upon information and belief, Defendant has profited from this
6 infringement.

7 54. This is an exceptional case under 15 U.S.C. § 1117(a).

8 55. Defendant's willful conduct has caused damage to Plaintiff in an amount
9 to be determined at trial, and unless restrained, will continue to cause serious and
10 irreparable injury for which there is no adequate remedy at law.

11 56. In light of the foregoing, Plaintiff is entitled to injunctive relief, and to
12 recover from Defendant all damages, including lost profits and attorneys' fees, that
13 Plaintiff has sustained and will sustain as a result thereof, in an amount not yet known,
14 but which circumstances warrant enhancement pursuant to 15 U.S.C. § 1117(a), as
15 well as the costs of this action. Plaintiff is also entitled to an accounting of Defendant's
16 profits resulting from its Lanham Act violations.

17 **THIRD CAUSE OF ACTION**

18 **(State Unfair Competition, Cal. Bus. & Prof. Code § 17200)**

19 57. Plaintiff repeats and realleges the allegations set forth in the paragraphs
20 above as if fully set forth herein.

21 58. Defendant is advertising, promoting, and selling unauthorized spice mixes
22 under and/or in connection with the SMOKEHOUSE BY THOUGHTFULLY and
23 THOUGHTFULLY trademarks in the United States through its Amazon.com listing.

24 59. Defendant's conduct complained of herein is likely to confuse the public
25 as to the origin, source or sponsorship of Defendant's unauthorized spice mixes, or to
26 cause mistake or to deceive the public into believing that Defendant and its products
27 are authorized, sponsored, endorsed, licensed by, or affiliated with Plaintiff, in

1 violation of Plaintiff's rights in the SMOKEHOUSE BY THOUGHTFULLY and
2 THOUGHTFULLY trademarks under Cal. Bus. & Prof. Code § 17200.

3 60. Upon information and belief, Defendant chose to provide, sell, advertise
4 and promote the unauthorized spice mixes under and/or in connection with the
5 SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks with
6 constructive and/or actual knowledge of Plaintiff's rights in the trademarks. The
7 unlawful, unfair, and/or fraudulent business acts and/or practices set forth herein have
8 been undertaken by Defendant willfully with the intention of causing harm to Plaintiff
9 and for the calculated purpose of misappropriating Plaintiff's goodwill and business
10 reputation in order to unlawfully divert sales from Plaintiff. By adopting and using the
11 SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY marks, Defendant
12 has been unjustly enriched and Plaintiff has been damaged.

13 61. By misappropriating and trading upon the goodwill and business
14 reputation represented by the SMOKEHOUSE BY THOUGHTFULLY and
15 THOUGHTFULLY trademarks, Defendant has been and, unless enjoined by this
16 Court, will continue to be unjustly enriched at Plaintiff's expense.

17 62. As a direct and proximate result of Defendant's wrongful conduct,
18 Defendant has profited, and will continue to profit, from the strength of the
19 SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks.

20 63. As a direct and proximate result of Defendant's wrongful conduct,
21 Plaintiff has been injured in fact and has lost money and profits, and such harm will
22 continue unless Defendant's acts are enjoined by the Court.

23 64. Defendant's sale, advertisement and promotion of Defendant's spice
24 mixes under and/or in connection with the SMOKEHOUSE BY THOUGHTFULLY
25 and THOUGHTFULLY trademarks, constitutes unfair competition under Cal. Bus. &
26 Prof. Code § 17200.

65. Defendant's conduct constitutes unfair competition with Plaintiff, all of which has caused and will continue to cause irreparable injury to Plaintiff's goodwill and reputation unless enjoined by this Court. Plaintiff has no adequate remedy at law.

66. In light of the foregoing, Plaintiff is entitled to an injunction under Cal. Bus. & Prof. Code §§ 17200 et seq. restraining Defendant from engaging in further such unlawful conduct, as well as restitution of those amounts unlawfully obtained by Defendant through its wrongful conduct.

FOURTH CAUSE OF ACTION

(Common Law Unfair Competition)

67. Plaintiff repeats and re-alleges the allegations set forth in the paragraphs above as if fully set forth herein.

68. Defendant's conduct complained of herein is likely to confuse the public as to the origin, source or sponsorship of Defendant's unauthorized spice mixes, or to cause mistake or to deceive the public into believing that Defendant and its products are authorized, sponsored, endorsed, licensed by, or affiliated with Plaintiff, in violation of Plaintiff's rights in the SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks under California common law.

69. Upon information and belief, Defendant chose to provide, sell, advertise and promote the unauthorized spice mixes under and/or in connection with the SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks with constructive and/or actual knowledge of Plaintiff's rights in the trademarks. The unlawful, unfair, and/or fraudulent business acts and/or practices set forth herein have been undertaken by Defendant willfully with the intention of causing harm to Plaintiff and for the calculated purpose of misappropriating Plaintiff's goodwill and business reputation in order to unlawfully divert sales from Plaintiff. By adopting and using the SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks, Defendant has been unjustly enriched and Plaintiff has been damaged.

70. By misappropriating and trading upon the goodwill and business reputation represented by the SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks, Defendant has been and, unless enjoined by this Court, will continue to be unjustly enriched at Plaintiff's expense.

71. Defendant's sale, advertisement and promotion of the unauthorized spice mixes under and/or in connection with the SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks, constitutes unfair competition under California common law.

72. Defendant's conduct constitutes unfair competition with Plaintiff, all of which has caused and will continue to cause irreparable injury to Plaintiff's goodwill and reputation unless enjoined by this Court. Plaintiff has no adequate remedy at law.

73. In light of the foregoing, Plaintiff is entitled to injunctive relief, and to recover from Defendant all damages, including lost profits and attorneys' fees, that Plaintiff has sustained and will sustain as a result thereof, in an amount not yet known, as well as the costs of this action.

FIFTH CAUSE OF ACTION

(Conversion)

74. Plaintiff repeats and re-alleges the allegations set forth in the paragraphs above as if fully set forth herein.

75. Defendant wrongfully converted, for its own use, a currently unknown quantity of SMOKEHOUSE BY THOUGHTFULLY spice mixes, the amount and value of which is to be proven at trial.

76. Plaintiff owns all SMOKEHOUSE BY THOUGHTFULLY spice mixes in its distribution channel prior to an authorized sale to a consumer.

77. Upon information and belief, SMOKEHOUSE BY THOUGHTFULLY spice mixes were stolen from Plaintiff by an unknown third party.

78. Upon information and belief, Defendant knew, or should have known that the SMOKEHOUSE BY THOUGHTFULLY spice mixes it was selling were stolen goods.

79. Defendant sold such unauthorized SMOKEHOUSE BY THOUGHTFULLY spice mixes through the website Amaozon.com, using the seller name “Best Jewelry”.

80. Defendant made such sales without Plaintiff's knowledge or consent.

81. Plaintiff has not received any benefit, monetary or otherwise, from the sale of these stolen goods.

82. As a direct and proximate result of Defendant's wrongful conversion, Plaintiff has been damaged in an amount believed to be in excess of \$75,000.00, the actual amount to be proven at trial, plus pre and post judgment interest and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands judgment as follows:

1. For an order and judgment that Defendant infringed Plaintiff's the SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks in violation of Plaintiff's rights under and 15 U.S.C. § 1114 15 U.S.C. § 1125(a), common law, and/or California law.

2. For an order and judgment that Defendant has acted in bad faith, willfully, intentionally, and/or with reckless disregard to Plaintiff's rights;

3. For an order permanently enjoining and restraining Defendant, its officers, agents, directors, shareholders, principals, licensees, distributors, attorneys, servants, employees, affiliates, subsidiaries and assigns, and all those persons in concert or participation with any of them from continued infringement of the SMOKEHOUSE BY THOUGHTFULLY and THOUGHTFULLY trademarks.

4. For an order directing Defendant to deliver up to Plaintiff's attorneys an accounting of all profits earned on the unauthorized spice mixes;

5. For an order directing such other relief as the Court may deem appropriate to prevent the public from deriving the erroneous impression that any product or services advertised, promoted, distributed, displayed, produced, sold or offered for sale by Defendant is in any manner authorized by Plaintiff or related in any way to Plaintiff;

6. For an order directing Defendant to file with the Court and serve upon Plaintiff's counsel within thirty (30) days after entry of judgment a report in writing under oath, setting forth in detail the manner and form in which it has complied with the above;

7. For an order awarding Plaintiff such damages it has sustained or will sustain by reason of Defendant's acts of trademark infringement and unfair competition pursuant to 15 U.S.C. § 1117;

8. For an order awarding Plaintiff all gains, profits, property and advantages derived by Defendant from Defendant's unlawful conduct and that such profits be enhanced pursuant to 17 U.S.C. § 1117;

9. For an order awarding Plaintiff exemplary and punitive damages to deter any further willful infringement as the Court finds appropriate;

10. For an order awarding Plaintiff its costs and disbursements incurred in this action, including reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a);

11. For an order awarding Plaintiff restitution for Defendant's unfair business practices pursuant to Cal. Bus. & Prof. Code §§ 17200 *et seq.*;

12. For an order awarding Plaintiff interest, including pre- and post-judgment interest, on the foregoing sums; and

13. For an order awarding Plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury in this action on all issues so triable.

1 Dated: December 7, 2023

DUANE MORRIS LLP

3 By: Jennifer M. Lantz
4 Jennifer M. Lantz

5 Attorney for Plaintiff
6 Coastal Cocktails, Inc.